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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

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6 VICTORIA JOY GODWIN,

7 Plaintiff,

8 v.

9 SENIOR GARDEN APARTMENTS, *et al.*,

10 Defendants.

Case No. 2:17-cv-02178-MMD-DJA  
ORDER ACCEPTING THE REPORT  
AND RECOMMENDATION OF  
MAGISTRATE JUDGE DANIEL J.  
ALBREGTS

11 This case, which commenced in August 2017, remains at the initial pleading stage  
12 on Plaintiff Victoria Joy Godwin's 139-page Third Amended Complaint ("TAC") (ECF No.  
13 34). Before the Court is the Report and Recommendation ("R&R") of Magistrate Judge  
14 Daniel J. Albregts, recommending that Plaintiff be permitted to proceed on all claims  
15 alleged in the TAC, except her sixth and seventh claims. (ECF No. 36.)<sup>1</sup> Judge Albregts  
16 recommends that these latter claims be dismissed with prejudice. (*Id.* at 4.) Plaintiff has  
17 filed both an objection ("Objection") and a separate "addendum" to the Objection. (ECF  
18 Nos. 39, 41.) The Court will not consider the latter.<sup>2</sup> For the reasons below, the Court will  
19 accept the R&R in full.

20 This Court "may accept, reject, or modify, in whole or in part, the findings or  
21 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party

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23 <sup>1</sup>ECF No. 36 also includes orders which are not part of Judge Albregts'  
24 recommendations to this Court.

25 <sup>2</sup>Even though Plaintiff is a pro se litigant, the Court strikes the "addendum" because  
26 it was filed without seeking leave of the Court and ultimately circumvents Local Rule 7-  
27 2(g), which requires leave of the Court prior to filing any supplemental briefing. See also  
28 LR IB 3-2(a) (specifically applicable to a magistrate's recommendations). "Pro se litigants are not excused from following court rules," *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 382 (9th Cir.1997), and they must follow the same rules of procedure that govern other litigants, *United States v. Merrill*, 746 F.2d 458, 465 (9th Cir.1984), *cert. denied*, 469 U.S. 1165 (1985), overruling on other grounds recognized by *United States v. Hanna*, 293 F.3d 1080 (9th Cir. 2002).

1 timely objects to a magistrate judge's report and recommendation, then the court is  
2 required to "make a *de novo* determination of those portions of the [report and  
3 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). In light of Plaintiff's  
4 Objection (ECF No. 39) the Court engages in *de novo* review of the TAC to decide whether  
5 to accept the R&R. Having done so, the Court concludes that the R&R should be accepted.

6 Plaintiff's Objection is difficult to follow such that it is hard for the Court to decipher  
7 what Plaintiff's specific objections are as to the dismissal of her sixth and seventh claims  
8 (ECF No. 134 at 120–139). In the Objection, the Court gathers that aside from her general  
9 disaffection with the recommendation of dismissal with prejudice, Plaintiff's chief  
10 disagreements with the R&R are that it lacks specificity as to why the claims are to be  
11 dismissed and that dismissal is premature without allowing for more evidence to be  
12 considered. (*See generally* ECF No. 39.) Plaintiff otherwise seems to suggest that Judge  
13 Albregts lacks the judicial experience to arrive at the correct decision on whether to  
14 dismiss the claims and she presents points akin to a dissertation about: (1) the role of the  
15 research attorney/law clerk in our system of checks and balances; and (2) the differences  
16 between men and women in thinking through issues and making decisions. (*Id.*) Absent  
17 more precise pertinent objections from Plaintiff to guide the Court's analysis here, the  
18 Court considers afresh the relevant assertions Plaintiff makes in the TAC, in pursuit of  
19 thoroughness.

20 As an initial matter and as briefly touched on by the R&R (ECF No. 36 at 2–3),  
21 Plaintiff's claims in the TAC exceed the scope of the amendments permitted in the order  
22 screening her second amended complaint ("SAC Order") (ECF No. 27). The SAC Order  
23 specifically provided Plaintiff leave only to amend her "third claim for discrimination, sixth  
24 claim for defamation/slander, and seventh claim for civil rights violations." (*E.g.*, ECF No.  
25 27 at 5.) In the TAC, Plaintiff purports to bring a sixth claim broadly titled "Deprivation of  
26 Constitutional Rights." (ECF No. 34 at 120.) This claim appears to have been part of  
27 Plaintiff's seventh claim in her second amended complaint ("SAC") and also encompasses  
28 state law allegations that were part of Plaintiff's eighth and ninth claims in the SAC.

1 (*Compare* ECF No. 20 at 41–48 *with* ECF No. 34 at 120–35.) To the extent Plaintiff asserts  
2 allegations in the TAC which were not permitted by amendment—those previously her  
3 eighth and ninth claims, Plaintiff has exceeded the scope of the permitted amendments  
4 and those allegations are not considered as part of the TAC. Further, the seventh “claim”  
5 in the TAC is for declaratory judgment—a relief, not a standalone claim (ECF No. 34 at  
6 136), which was not asserted in the SAC. Thus, dismissal of the seventh “claim” is also  
7 warranted for exceeding the scope of permitted amendments.

8 Moreover, on its substance, the Court also agrees with Judge Albregts’  
9 recommendation to dismiss Plaintiff’s seventh “claim” (ECF No. 34 at 136–39). (ECF No.  
10 36 at 4.) In this claim, Plaintiff prefaces her assertions, stating: “Plaintiff reserves the right  
11 to raise an issue for declaratory judgment . . . once Defendants clarify Defendants’ stance  
12 on the role of the Research attorney/Law Clerk.” (*Id.* at 136.) The Court finds that Plaintiff’s  
13 purported reservation of rights is not an assertion of a claim and she relies on no authority  
14 to support the availability of declaratory relief in the context of this action.

15 To the extent Plaintiff’s sixth claim does not exceed the scope of permitted  
16 amendments, the Court agrees that it should also be dismissed. In the R&R, Judge  
17 Albregts concluded that Plaintiff’s sixth claim was insufficiently pleaded and did not state  
18 a plausible claim for violation of her due process rights and conspiracy to violate her equal  
19 protection rights. (ECF No. 36 at 3–4.) To be sure, Plaintiff’s sixth claim spans roughly 14  
20 pages (ECF No. 120–35) and includes subheadings of ancillary assertions while  
21 additionally incorporating preceding allegations. The sixth claim is presented as being for  
22 federal and state constitutional violations as well as other state law abuses. The claim  
23 exceeds the scope of permitted amendment as to the state law claims—Plaintiff’s eighth  
24 and ninth claims in the SAC previously noted. Plaintiff otherwise asserts violations of her  
25 right to equal protection under the laws, violations of her due process rights and conspiracy  
26 to violate the same. While intermixed with alleged facts, Plaintiff’s sixth claim is a  
27 meandering quagmire of convoluted jargon. Even with great effort, the Court was unable  
28 to decipher a specific legally cognizable claim/injury for which relief may be granted from

1 the assertions constituting the sixth claim. The Court further agrees that the claim should  
2 be dismissed with prejudice because Plaintiff has been thrice allowed to amend it to no  
3 avail (see ECF No. 36 at 4).

4 In sum, the Court agrees with the R&R's recommendations to dismiss the sixth and  
5 seventh claims Plaintiff alleges in the TAC.

6 It is therefore ordered, adjudged and decreed that the Report and Recommendation  
7 of Magistrate Judge Daniel J. Albregts (ECF No. 36) is accepted and adopted in its  
8 entirety.

9 It is further ordered that Plaintiff's sixth and seventh claims, as asserted in the TAC,  
10 are dismissed from this action and Plaintiff will be allowed to proceed on her other claims.

11 It is further ordered that Plaintiff's "addendum" to her Objection (ECF No. 41) is  
12 stricken.

13 It is further ordered that Plaintiff's Objection (ECF No. 39) is overruled.

14 It is further ordered that the Clerk of the Court send to Plaintiff USM-285 forms and  
15 proposed summons forms for each Defendant, along with a copy of this order. Upon  
16 receipt, Plaintiff must complete the forms with all required information and return them to  
17 the Clerk within 30 days of this order.

18 DATED THIS 13<sup>th</sup> day of April 2020.

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21 MIRANDA M. DU  
22 CHIEF UNITED STATES DISTRICT JUDGE  
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